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CURRENT TOPICS

Acting for Both Parties

THE comment of the Council of The Law Society on the propriety of the same solicitors acting for both vendor and purchaser in conveyancing matters is based on sturdy common sense (see the *Law Society's Gazette* for August, p. 374). As interpreted by the Council the *obiter dicta* of DANCKWERTS, J., in *Goody* v. *Baring* [1956] 1 W.L.R. 448 ; *ante*, p. 320, do not go so far as to suggest that there is anything inherently improper in a solicitor acting for both parties, and point out that the Solicitors' Remuneration Orders expressly contemplate that in many situations the same solicitor can act for both parties with a consequent adjustment of charges. We entirely agree that the complete cessation of the practice whereby solicitors act for both parties would cause both hardship and inconvenience, but the fact remains that solicitors should be extremely cautious about undertaking to act for both parties and even if there is no cloud on the horizon should expressly warn their clients that, if divergences of interest should arise, they would have to seek other advice. To forecast difficulties is a matter of experience rather than of learning. It is usually found that conflicts arise more frequently in landlord and tenant transactions than in transactions between vendor and purchaser, and it is perhaps strange that the Remuneration Orders appear to encourage parties to leases to employ the same solicitor. Another fruitful source of conflict is the sale and purchase of businesses, and solicitors are wise to insist that in all but the most straightforward of such cases the parties are separately advised. The Council also make some observations, which should be carefully studied, about the duty of a purchaser's solicitors to make inquiries about the legally recoverable rents of houses.

Local Government

THE Government's White Paper on Local Government (Cmd. 9831, 1s.) makes it virtually certain that the familiar faces which we have known, even if not loved, for the past sixty years and more, will remain unchanged. All that the Government propose, in a White Paper which is remarkable for vague aspirations rather than for concrete plans, is to remove a few warts and wrinkles. There is no doubt that many improvements can be made, but so far no one has devised any radical reform which would not raise at least as many problems as it solved. We hope that there will be some constructive plans for conferring power on units smaller than the county : many delays take place, especially in planning matters, because of the need for correspondence to pass between the county and the district councils.

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Manifest Justice

WHEN must justice be manifestly seen to be done? The question is prompted by a recent *dictum* as well as a court decision on the point. On 19th July, the chairman of the National Health Service Tribunal, Sir REGINALD SHARPE, Q.C., publicly stated that the hearing of complaints against doctors and dentists should be conducted in public and not *in camera* as at present, and that the tribunal thought it most unfortunate that its proceedings should be veiled from the public gaze. The decision was one given by the Court of Session on 19th July that an appeal tribunal set up by the Wool Marketing Scheme was not a tribunal where justice must be seen to be done. Mr. S. ALDER, writing on these events in *The Times* of 31st July, commented: "I can only conclude that now in England we are to have two kinds of justice, the one for doctors and dentists which must be seen to be done, and the other for wool farmers, which need not be seen to be done." It is difficult to find an answer to this criticism. Experience of totalitarian methods in other countries proves the fatal consequences of permitting trials behind closed doors. It may well be asked how there can be any exception to the salutary rule of public trial other than that of public safety. Mere administrative convenience can never be a permissible exception where a judicial or quasi-judicial decision has to be given.

Damages for Loss of Services

THE Crown, it is now established by *Commissioners of Inland Revenue* v. *Hambrook* (*The Times*, 31st July), is not entitled to damages *per quod servitium amisit* against a person who, by his negligence, injures a civil servant. The Court of Appeal held that *A.-G.* v. *Valle-Jones* [1935] 2 K.B. 209 was wrongly decided, and that recent Australian decisions upheld by the Privy Council (*A.-G. for New South Wales* v. *Perpetual Trustee Co., Ltd.* [1955] A.C. 457) must be followed. The action for loss of services, DENNING, L.J., held, should be confined to-day, as it was in the eighteenth century, to the realm of domestic relations where a member of the master's household is injured. He commented on the different state of the law prevailing in the Middle Ages, when servants were regarded as property belonging to their master, and if another man took them away he could be sued in trespass just as if he took cattle. An interesting illustration of the anomaly that would arise if such an action could succeed was given by Denning, L.J.: "If a solicitor is injured, his clients might be much prejudiced by his absence from his work; but they have no claim for damages on that account. The principle of law was stated in *Admiralty Commissioners* v. *ss. Amerika* [1917] A.C. 38, at p. 45, that 'the loss of *A* arising out of an injury whereby *B* is unable to perform his contract is not actionable'."

The Plight of the Bar

The Times last week produced a leading article and a shorter article on the subject of earnings at the Bar. The article in the issue of 31st July had as its theme the low remuneration paid in the Queen's Bench Division for work preliminary to trial, which, the writer said, was by and large similar to that paid in 1883. This is a serious matter, because, as he said, the majority of barristers practise in the Queen's Bench Division, where only two in a hundred cases begun ever com into court. "Solicitors," he wrote, "in duty to their client are reluctant to agree higher fees for their counsel than the client can be expected to recover if he wins," and the leve adopted by taxing masters, in their unfettered discretion t decide what is just and reasonable under the rules of 188 "has shown very little upward trend, at least in livin memory." The case for fixing minimum and maximum fee in the same way as they are fixed for appearances in th county courts was put thus: "What is fixed by code i alterable; what is graven on the hearts of taxing master is not easy to know or to eradicate." The second article a leader in the issue of 3rd August, gave details of the seriousness of the present situation of the Bar, their low averag earnings, and the drift away of some of their best men int better paid occupations. The writer emphasised the resulting impoverishment of the bench. Not only the bench i impoverished, but in a judicial system in which the right o audience is exclusively in the hands of specialist advocates the whole system suffers. The advantages of an exper service can be preserved only by paying for it at least a much as we pay for other expert services. The plight of the Bar is in that respect the plight of all of us.

Footprints as Identification

A DEFENDANT convicted at Lewes Assizes on 30th July of breaking and entering a top-floor flat next to his own and stealing two articles of underclothing was said to have been identified from his bare footprints, found in his neighbour's flat. He had entered it by walking along a gulley in his bare feet and climbing through a window. Since the case of Man Friday, in which the identification was only of the species to which the footprint maker belonged, we know of no similar case which has any factual basis. (There are, of course, hypothetical cases, the Yeti in science, and the leaver of footprints on the sands of time.) However, it may be inferred from observations by the learned judge who tried the case that he envisages the possibility of a future world in which bare feet will be so fashionable as to make the work of footprint detection worthwhile. He said: "It has become recognised that fingerprints are very strong evidence of identification, but although it may be reached in another generation, the stage has not yet been reached when scientific and biological study of footprints enables us to say: 'Yes, we are sure of it'." In the meanwhile, one supposes, burglars will be warned by the Lewes case to continue to use their old-fashioned gloves and socks.

The Registrar of Restrictive Trading Agreements

THE office of the Registrar of Restrictive Trading Agreements is now open at Chancery House, Chancery Lane, London, W.C.2 (Telephone: CHAncery 2858). Mr. RUPERT LEIGH SICH, C.B., formerly Principal Assistant Treasury Solicitor dealing with Ministry of Fuel and Power work, has been appointed Registrar of Restrictive Trading Agreements. A statement by the PRESIDENT OF THE BOARD OF TRADE on the Registration of Restrictive Trading Agreements Order, 1956, which it is proposed to bring into force on 30th November after Parliament has approved it, is reproduced at p. 606, *post*.

DON'T DILLY-DALLY ON THE WAY

A RECENT case that is important, not because it establishes a new principle, but because it makes clearer a limitation of one that has been the subject of many decisions, is that of *Crook* v. *Derbyshire Stone, Ltd.* [1956] 1 W.L.R. 432; *ante*, p. 302. For that reason it is worthy of note, especially so because the facts before the court were straightforward and, in consequence, easier to apply.

The plaintiff, a motor-cyclist, claimed damages against the first defendants in respect of injuries sustained by him as a result of an accident caused partly by his own negligence and partly by that of the second defendant, a lorry driver, who was employed by the first defendants. The lorry driver, with the consent of his employers, at least by implication, stopped his lorry on one side of a road which he proceeded to cross in order to obtain refreshment in a convenient café on the other side. When he was within a few feet of a refuge in the middle of the road the accident occurred and it was agreed that the blame for it rested, in equal proportions, on the plaintiff and the second defendant.

The point to be decided was whether, as the plaintiff contended, the lorry driver was acting in the course of his employment in that at the time of the accident he was performing an act permitted by his employers, who were, therefore, liable to the plaintiff for the negligence of their employee. The principle to be borne in mind is that a master is vicariously liable for the negligent acts of his servant committed in the course of his employment. Has this principle been limited to save an employer from liability where the tortious act was admittedly performed within the period of the servant's employment and with his master's consent, but was committed at a time when the servant was engaged on a task that he was not employed to perform?

When one turns to the decisions of the courts to seek an answer to this question, the truth of the late Professor Winfield's statement that "the decided cases are not very amenable to any scientific classification" becomes immediately apparent.

However, the leading case, which counsel for the plaintiff cited and on which counsel for the employers relied, is more helpful than most. In this case, *Century Insurance Co., Ltd.* v. *Northern Ireland Transport Board* [1942] A.C. 509, a lorry driver was employed to drive a petrol lorry and to deliver petrol from the lorry into the underground tank of a garage. While the spirit was being pumped from the tanker to the tank, he struck a match to light a cigarette and threw the match on the floor. The result "was a conflagration and explosion and a great deal of damage was done"! It was contended that the lorry driver, in his performance of the negligent act, was nevertheless acting in the course of his employment, and, therefore, that his employers were liable for the consequences of his negligence. The Court of Appeal in Northern Ireland upheld this submission, and their decision found favour with the House of Lords.

Unbroken performance of duties

Their lordships took the view that the lorry driver was acting in the course of his employment when he drove up to the garage, when he put the nozzle into the tank and turned on the tap, as he supervised the operation to see that the correct amount of petrol was delivered and, at the proper time, when he turned off the tap and withdrew the nozzle. He was continuously employed in his master's business or, as Viscount Simon put it, "in circumstances like these 'they also serve who only stand and wait'." In other words, at the time that he struck the match he was also supervising the delivery of the petrol, which was one of the duties that he was employed to perform. At no time had he ceased to do what he was employed to do, and the striking of a match to light a cigarette, although grossly negligent, was incidental to the unbroken performance of his duties. The test as to whether a servant was acting in the course of his employment at a given moment would seem to be: "Was his action incidental to something that he was employed to do and which he was in fact doing when the tortious act was committed?"

Lord Wright made it quite clear that the act which is incidental to a servant's employment need no longer be one that is performed for the benefit of his master. In support of this assertion he referred to the well-known case of *Lloyd* v. *Grace, Smith & Co.* [1912] A.C. 716, where it was held that a solicitor was liable for the fraud of his managing clerk perpetrated when acting in this capacity, even though the master was ignorant of his servant's acts and stood to gain nothing from them. Thus, the smoking of a cigarette, although for his own comfort and not for the benefit of his master, would, if he was at the same time performing an allotted task, be within the scope of his employment.

Having arrived at these conclusions, it is unnecessary to consider at length such cases as *Jefferson* v. *Derbyshire Farmers, Ltd.* [1921] 2 K.B. 281, where the facts were similar and were considered by the House of Lords in the *Century Insurance* case.

The crucial break

To return to the case that has prompted this discussion, the decisive points would appear to have been clarified. At the moment of the accident from which the cause of action arose, the lorry driver was not doing what he was employed to do, that is, driving his lorry. He had stopped for a cup of tea, albeit with the implied consent of his employers, but he was not at the crucial moment serving his master, who was not, therefore, liable for his servant's tort. In the words of Pilcher, J., before whom the case was heard, "he had no further duty to perform on his master's account until he returned to the lorry and resumed his journey." He was engaged on his own business, not that of his master, who for this reason was absolved from liability for his wrongful act. It is conceded that this does not establish a new principle, but it is submitted that it is a good illustration of a limitation of the doctrine that a master is vicariously liable for the torts of his servant committed in the course of his employment.

The lorry driver is unlikely to find much comfort in the knowledge that he has made the interpretation of an important aspect of the law a little easier. We can only guess at his thoughts as he reflects that he stopped for his refreshment a mere six or seven minutes distant from his destination.

D. G. C.

Mr. R. H. SMALL, Resident Magistrate, Jamaica, has been appointed a Puisne Judge in that territory.

Mr. JAMES C. SWAFFIELD, senior assistant solicitor to Southend Corporation, has been appointed deputy town clerk of Blackpool.

Taxation

THE FINANCE ACT, 1956

IN our issue of 12th May, 1956 (*ante*, p. 347), we published a summary of the principal provisions of the Finance (No. 2) Bill, 1955, as it was originally introduced into the House of Commons. That Bill has now, on 2nd August, 1956, received Royal Assent as the Finance Act, 1956, but has suffered some amendments in the process. Accordingly, we give herewith a summary of the most important of those amendments, taking them in the same order as the clauses of the original Bill were considered in the previous article.

Retirement benefits

The type of benefit

In the original proposals the annuities that could be had were an annuity on the life of the individual concerned or for a fixed term certain not exceeding five years, whichever might be the longer, or an annuity to the individual's widow or widower (or in some cases to some other dependant) during life only. It is now provided that the annuity may continue during life or for a fixed term not exceeding ten years and that this is to be so whether the life chosen is that of the individual or of such widow, widower or dependant. It is also provided that in the case of an annuity to continue for a term certain it may be assigned by will notwithstanding the general provisions against assignments of benefits under the scheme.

The relief to be obtained

Under the original proposals the amount of premium qualifying for relief was limited to the lesser of £500 or one-tenth of the individual's "relevant earnings" for the year of assessment concerned, and this provision has received considerable amendments and extensions in order to come nearer to implementing the original proposals of the Millard Tucker Report and in order to make better provisions for the older person. It is now provided that in any case the amount of premium qualifying should be limited to the lesser of £750 or one-tenth of the individual's earnings, but this amount and this percentage is increased in the case of persons born in or before the year 1915. In the case of such persons the amount of relief is as follows:—

Year of birth	*Sum*	*Percentage*
1914 or 1915	£825	11 per cent.
1912 or 1913	£900	12 per cent.
1910 or 1911	£975	13 per cent.
1908 or 1909	£1,050	14 per cent.
1907 or any earlier year	£1,125	15 per cent.

Other income tax provisions

Savings bank interest

The provision for freeing from income tax but not sur-tax interest on deposits in the Post Office Savings Bank or ordinary deposits with a Trustee Savings Bank up to a limit of £15 per annum is now extended to include savings banks established under local Acts (such as the Birmingham Municipal Bank) which comply with certain conditions laid down in s. 9 of the Act.

Foreign employments

Some of the most considerable amendments are to be found in s. 10, which corresponds to cl. 9 of the original Bill. It will be recalled that by the original proposals any person who carried out the actual duties of an employment in the United Kingdom was to be taxed upon the whole of his emoluments notwithstanding that those emoluments arose under a foreign contract, were paid abroad by a foreign national and never came near the United Kingdom. It appears that the Chancellor of the Exchequer somewhat belatedly realised that the result of this would be extremely damaging to the economy inasmuch as it would drive away a great deal of foreign enterprise, and it is now provided that such treatment shall not be accorded in the case of emoluments of a person not domiciled in the United Kingdom from an office or employment under or with any person, body of persons or partnership resident outside and not resident in the United Kingdom.

The proposal in cl. 10 of the original Bill now to be found in s. 11 of the Act that, in considering the residence of a person performing the duties of an office or employment entirely outside the United Kingdom, the question is to be decided without regard to any place of abode maintained for his use in the United Kingdom has now been extended to include cases where, although the duties are not performed entirely outside the United Kingdom, yet those duties which are performed within the United Kingdom are merely incidental to the performance of the other duties.

Miscellaneous

A new provision is to be found in s. 13 whereby the salary of a member of the House of Commons is for income tax purposes to be treated as reduced by the amounts deducted for contributions to the House of Commons Members' Fund, and there is also a new provision in s. 14 that annuities and additional pensions paid to holders of the Victoria Cross by virtue of holding that award should be disregarded for all purposes of the Income Tax Acts. There can be no doubt that the second of these provisions will receive a more enthusiastic welcome from the public at large than will the first.

Death duties

Retirement benefit annuities

There is a new provision in s. 35 to the effect that where there is included for estate duty purposes an annuity payable to a widow, widower or other dependant pursuant to the above-mentioned provisions for retirement benefits, such annuity shall be treated as a life assurance within the Finance Act, 1954, s. 33 (2), with the result that the value of such annuity will be aggregated with any such policies as are mentioned in that section but will escape aggregation with the rest of the deceased's estate.

"Surviving spouse" exemption

It may be recalled that prior to the Finance Act, 1954, s. 32, property might be settled by a will of a husband upon his wife for life with remainder over, she not being competent to dispose, and the benefit of the "surviving spouse" exemption might not be obtained on the wife's death because the husband's estate had been so small that duty was not payable thereon. The Finance Act, 1954, s. 32 (2), was thought to have put this in order by providing that the exemption would be obtained if duty had been paid on the death of the

other spouse or would have been paid if duty were payable on estates of however small a principal value. In the two years since the passing of that Act an ingenious mind has discovered that the estate of the first spouse to die might have been insolvent but have included assets which had greatly appreciated in value by the time of the death of the surviving spouse, and in this circumstance the exemption would not have been obtained because, even if duty had been payable on estates of however small a principal value, it would not have been payable on an insolvent estate, and s. 36 is designed to remedy the matter.

Stamp duties

Section 29 provides that any banker may enter into agreement for composition of the stamp duty charged upon cheques, so that when this is put into operation we may no longer see the familiar blue oval stamp upon our cheques.

Miscellaneous

There was in the original Bill a proposal to charge purchase tax where an individual, not being a trader, made a car. This has now been amended so that such a charge is only applied where a person makes a vehicle which is not a car into a vehicle which is a car. The distinction between manufacture and conversion is clear enough in principle, but one can envisage entertaining questions of fact as to whether the original raw material was or was not sufficiently put together to constitute a vehicle.

Attention had been drawn to the fact that, in cl. 2 of the Bill, in order to impose an excise duty upon certain varieties of cider and perry it was necessary to include five deeming provisions in the course of one clause. It is encouraging to observe that in s. 2 of the Act this clause has been redrafted and there are now only four deeming provisions.

G. B. G.

Company Law and Practice

A CASE ON PROSPECTUSES

THE case which came before Wynn Parry, J., last December in connection with the Union Castle-Clan Line merger illustrates several interesting points on prospectuses (*Governments Stock and Other Securities Investment Co., Ltd., v. Christopher and Others* [1956] 1 W.L.R. 237 ; p. 186, *ante*). The plaintiff company in that case sought to restrain the Union Castle directors from taking any further steps in connection with the merger, and one of the grounds on which they sought an injunction was that the circular letter addressed to the Union Castle shareholders was a prospectus within the meaning of the Companies Act, 1948, and that it did not comply with the statutory provisions. The circular was issued by a new company, the British and Commonwealth Shipping Co., Ltd., which had been formed to acquire the Union Castle and Clan Line shares, and offered shares in the new company in exchange therefor. The plaintiff argued that the circular offered shares in the new company to the public for subscription or purchase, and that accordingly it fell within the definition of " prospectus " in the Act.

The plaintiff argued that " prospectus " as used in s. 38 of the Companies Act, 1948, must be given a wider meaning than that contained in the definition section (s. 455) by reason of the fact that subs. (3), which makes the issue of a form of application for shares or debentures illegal unless accompanied by a prospectus complying with the requirements of the section, contains nothing to limit its operation to issues for cash. Accordingly, so it was argued, the subsection must also operate in the case of issues made for a consideration other than cash, thus producing a context which requires " prospectus " to cover documents not included in s. 455. This argument was rejected by Wynn Parry, J., who refused to give " prospectus " the extended meaning for which the plaintiff contended. It followed from this that the reference to a form of application in subs. (3) means only a form of application in connection with a prospectus offering shares for subscription or purchase.

Having disposed of this preliminary argument, his lordship proceeded to consider whether the circular was a prospectus within the meaning of s. 455, which defines the term as follows :—

> " ' prospectus ' means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company."

He held that it did not come within the definition for the following reasons :—

> Firstly, that the circular could not be an offer of shares for " purchase " by the Union Castle shareholders, since the shares were at the time unissued and therefore incapable of being offered for sale (applying *Re V.G.M. Holdings, Ltd.* [1942] Ch. 235) ;
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> Secondly, that the circular could not be an offer of shares for " subscription " since subscription, giving the word its ordinary meaning and also in the context in which it appears in the Act, means taking or agreeing to take shares for cash ; and
>
> Thirdly, that in any event the circular was not distributed to the public, but fell within s. 55 (2) of the Act ; i.e., that it was a domestic concern of the persons making and receiving the offer and not calculated to result in the shares becoming available for subscription or purchase by persons other than those receiving the offer. In this connection his lordship referred to the fact that those who accepted the offer were to receive non-renounceable allotment letters for the new shares, and also observed that it would be strange if the circular were in fact a prospectus, as permission of the Board of Trade under s. 13 of the Prevention of Fraud (Investments) Act, 1939, had been sought and obtained on the footing that it was not a prospectus.

In the result, the relief claimed was refused. The merger, as readers will know, subsequently went through upon modified terms.

J. P.

Out of thirty candidates at the Preliminary Examination of The Law Society, held on 2nd, 3rd, 4th and 5th July, sixteen passed.

A Conveyancer's Diary

NOTICE TO COMPLETE

CONDITION 23 (1) of the National Conditions of Sale in their present form (16th ed.) provides as follows: "At any time on or after the completion date, the vendor, being himself able, ready and willing to complete, may (without prejudice to any other right or remedy of the vendor against the purchaser) give to the purchaser or his solicitor notice in writing requiring the purchaser to complete within such period (not being less than twenty-eight days) as the notice shall prescribe . . . And if the purchaser shall not complete accordingly, the vendor may at any time after the expiration of the notice, without previously tendering a conveyance, forfeit the deposit and resell the property by public auction subject to such conditions as he shall think fit."

It is well known that the present language of this important common-form condition is due to the decision in *Smith* v. *Hamilton* [1951] Ch. 174. Before that decision the corresponding condition in the then current (15th) edition of these conditions provided as follows: "If the purchaser shall neglect or fail to complete his purchase according to these conditions, his deposit shall thereupon be forfeited (unless the court otherwise directs) to the vendor and the vendor may, with or without notice or without previously tendering a conveyance, resell the property . . ." In *Smith* v. *Hamilton* it was held that if a contract incorporating this condition had not made time of the essence in the matter of completion on the day fixed, this condition did not entitle the vendor to serve a notice after the completion date had gone by making it so. In *Green* v. *Sevin* (1879), 13 Ch. D. 589, Fry, J., had said that "that which is not of the essence of the original contract is not to be made so by the volition of one of the parties, unless the other has done something which gives a right to the other [*sic*] to make it so . . . There must have been such improper conduct on the part of the other as to justify the rescission of the contract *sub modo*, that is, if a reasonable notice be not complied with."

No immediate remedy

In the case of the purchaser simply failing to complete after the day fixed for completion, the position was therefore this: the vendor had no remedy until such a time had elapsed as would have entitled him to take steps to rescind the contract, that is, such a time as would by its mere length indicate to the court that the purchaser had abandoned his original intention to complete the contract. When such a time had elapsed, the vendor might serve a notice giving to the purchaser a reasonable time to complete, and if that time went by without the purchaser completing, the vendor was entitled to forfeit the deposit and resell, if the contract provided for the forfeiture of the deposit in the way in which the condition in the National Conditions which was the centre of discussion in *Smith* v. *Hamilton* provided, or if the contract did not so provide, to rescind the contract. The "reasonable time" for a notice to fix in these circumstances for completion was usually regarded as being at least twenty-eight days.

Fixing a date

It has, I think, generally been thought that the effect of the condition in its new form was that as soon as the completion date had passed, whatever the reason for the purchaser's failure to complete on that day, the vendor became entitled to serve notice requiring completion within twenty-eight days and, if this notice was not complied with, to forfeit the deposit and resell. It has always seemed to me that if it is to be a term of the contract that unless it is completed on, say, the 1st February, the vendor may forfeit the deposit and resell, the most straightforward way of so providing is to provide for completion on or before the 1st February and to make time of the essence for this purpose. That makes everything clear from the start. But for some reason which I have never been able to appreciate a firm completion date has never been popular with purchasers, however realistically the date is fixed. Doubtless it was on account of this reluctance on the part of purchasers and their solicitors to bind themselves to a fixed date from the start that the authors of the current edition of the National Conditions and other commonly used printed conditions tried to achieve the same end in a less direct way. And like so many like attempts, it has, temporarily at any rate, come to grief.

Notice must be reasonable

In *Re Barr's Contract* [1956] 1 W.L.R. 918, and p. 550, *ante* (how refreshing it is to see a case so entitled: one had come to look upon a vendor and purchaser summons as being as dead as the dodo), the date for completion in a contract incorporating the National Conditions in their current form was fixed as the 31st January. The sale not being completed on that day, on the 1st February the vendors served upon the purchasers a notice, pursuantly to condition 23 (1), requiring the purchasers to complete within twenty-eight days. The question was whether this was a good notice, or, as Danckwerts, J., put it, "Whether this condition is to be effective according to the stark nature of its terms, or whether it must be construed in such a way as to give it a reasonable effect according to the circumstances of the case." The answer which the learned judge gave to this question was that the provision in condition 23 (1) entitling the vendor to give notice to complete within such period, not being less than twenty-eight days, as the notice should prescribe, "is subject to this important consideration, that it still requires the vendor, in giving such a notice as this, to give a notice which must not in any case be less than twenty-eight days, and must be reasonable having regard to all the circumstances of the case." The case of the purchasers in *Re Barr's Contract* was perhaps a hard one, and having reviewed the facts Danckwerts, J., held that, on the construction which he thought that the condition should bear and in all the circumstances, the vendors' notice was bad and the vendors were not therefore entitled to forfeit the deposit and resell.

Tenderness towards purchasers

The eyes of the court were directed in this case on the plight of the purchasers, whose arrangements for a sub-sale of part of the property which they had contracted to purchase fell through unexpectedly at the last moment and left them to find a very large sum of money in a very short space of time. No doubt the purchasers were in great difficulties; but they were builders (a fact not adverted to in the judgment as reported) and this transaction was a commercial speculation of a very risky kind: the land was at the time the subject of an appeal against a decision refusing planning permission to develop the land as a building estate. The inconvenience of the decision lies in this, that it makes it so much the more

difficult for a vendor to fix as a date for completion a date on which he can reasonably expect to have the agreed purchase price in his hands. This is often a matter of the greatest importance to a vendor, particularly one who has to sell one property in order to buy another.

The tenderness of the courts of Chancery towards purchasers in this matter of time is not matched by any similar consideration for the plight in which the vendor may find himself, but doubtless it is too late to make any radical alteration of the law. If it were not, the rule, which owes its origin largely to the difficulties of making title to land under the old law, might well be declared inapplicable in the case (as was the case in *Re Barr's Contract*) where the title to the land is registered. But the decision in the case under review was not strictly a decision on a point of law: it was a decision on the construction of a particular contract, and the court was free to decide it either way. One may, I think, without disrespect regret that this case was not decided the other way.

"A B C"

Landlord and Tenant Notebook

"WOES OF A LANDLORD"

THE above, less the quotation marks, was the main title of a lengthy contribution to *The Times* of 7th February last (sub-title: "When an Englishman's House is his Millstone"). A statement in italics describes the article as "an account of the frustrations of the small owner who wants to behave decently" and as explaining "why the Housing Repairs and Rents Act has failed to rescue the older houses from needless neglect."

I deprecate the "I told you so" attitude as much as anyone, but a perusal of the contribution inevitably suggests that the woes complained of would have been less serious if the contributor had from time to time sought competent legal advice.

His story began with his being left, by his parents, the family house in Lancashire, purchased by his parents for some £675 in 1927, in 1941: a modest lower middle-class house in a respectable street in a respectable suburb; which he proceeded, on the advice of a reputable firm of house agents, to let at £1 a week.

The agents did not, apparently, advise him that the house might have a standard rent or that the Housing Act, 1936, s. 2, left him free, as far as it was concerned, to negotiate a tenancy making the tenant fully liable for upkeep of the house. And disrepair occasioned the first disappointment: a year or two after the war dry rot was discovered, which cost him £55, and he was called upon to bear part of the cost of a new kitchen range, the old one having cracked across. He was "sternly told" by the agents that the range was a landlord's fixture.

Disrepair

These two items, says the writer, put him deeply in the red over the whole period of his landlordism. Leaving out of consideration, for the moment, the question of standard rent and its implications, which did not arise till later, one cannot escape the thought that the assumption of responsibility was too lightly made. It is true that, apart from any contractual obligations or the absence of such, local authorities can concern themselves with such matters as dry rot and defective cooking apparatus, and it is the landlord who is the subject of their attentions. In the case of dry rot, it may well be that this would give rise to a nuisance due to "structural defect," and nothing short of a tenant's undertaking to repair would have enabled the landlord to recoup himself; but liability to replace the range would have depended, at that time, on whether the house was occupied, or of a type suitable for occupation by, persons of the working classes. The qualifying words in the Housing Act, 1936, s. 9, had not yet been deleted by the Act of 1949. (It was about this time that Denning, J., as he then was, expressed disapproval of the continued use of the expression "working classes" as inappropriate to modern conditions: *Green and Sons* v. *Minister of Health* [1948] K.B. 34.)

Approved type dustbin

The next woe was a bill from the local authority for supplying the tenant with an "approved type ashbin and cover." The writer asked why the tenant was incapable of buying such himself and was told that "under an Act of 1875 the local authority had power to compel" him to buy it.

There is nothing in the Public Health Act, 1875, s. 75, which authorises a local authority to buy a dustbin and send a bill to a landlord "just like that." A notice requiring the landlord (or the occupier) to provide it is a necessary preliminary, and an appeal can be made to the local magistrates' court. It was, admittedly, not till the Local Government (Miscellaneous Provisions) Act, 1953, s. 8 (4), became law that the ground that it was not equitable that the notice should have been served on the appellant was expressly recognised as a ground of appeal; but before then Lord Goddard, C.J., had told us, in *Croydon Corporation* v. *Thomas* [1947] K.B. 386, that the mere calling upon a person was a grievance. That and other cases discussed in an article in this Journal on 15th October, 1949 (93 SOL. J. 638), show that the landlord sometimes wins.

"Excess rents"

The Finance Act, 1940 (which remedied *Fry* v. *Salisbury House Estate, Ltd.* [1930] A.C. 432), was responsible for the next complaint: the writer could not understand why he could be receiving "excess rent" (see s. 15) when he was losing money. But it does not appear that he ever studied the information relating to relief on the ground of repairs, still less consulted anyone on the point: "There was the Finance Act and I had to pay."

Old control

But a worse blow was yet to come. On the enactment of the Housing Repairs and Rents Act, 1954, the writer's agents advised him that he could increase the rent by 3s. 7d. They then "discovered" that as he had first let the house in 1941, the 1954 Act required a local rent tribunal to fix the rent.

There appears, of course, to be much confusion here. The "discovery" was presumably the Landlord and Tenant (Rent Control) Act, 1949, it being assumed that the standard rent

was the £1 a week of the 1941 letting; and the statute in question does not require the tribunal to determine anything unless one of the parties applies to it; the effect of the 1954 Act was that such determination might mean an increase, and not merely a decrease (Landlord and Tenant Act, 1954, s. 36 (1)). Perhaps the agents had this in mind, the 1941 rent having possibly been influenced by war-time conditions.

But the first result at the attempt to obtain a repairs increase was a counter-attack by the tenant, who appears to have ascertained that the house had been let in the year 1914 and, though purchased from an owner-occupier in 1927, ought to have been registered "in 1933 and 1937." Hardly both: the house may have been a Class C house (rateable value not more than £13) which had become decontrolled by the landlord obtaining actual possession after July, 1923, so that the owner should, when the Rent, etc., Restrictions (Amendment) Act, 1933, was passed, have registered it (by 18th October, 1933) so as to avoid recontrol; or it may have belonged to Lower Class B, so that it should have been registered by 26th August, 1938. As the writer's parents had neglected to register it, the house had remained under "old control."

This particular misfortune could not be avoided, and I agree that the parents' omission (they having bought from an owner-occupier) could hardly be considered culpable; nor would one expect the son to make preliminary inquiries or requisitions before accepting the executors' assent. The revelation that the house had been let in 1914 can be compared to that of a similar discovery which led to the decision in *Davies* v. *Warwick* [1943] K.B. 329 (C.A.). In that case the tenant, close on two years after taking the house at 12s. 6d. a week, found that it had been let at 3s. 9d. in 1916 (later raised to 4s. 3d. by then permitted increases). His landlord, who had bought it from an owner-occupier, was unable to resist a claim for overpaid rent. As Goddard, L.J., said "It is said that to give the plain meaning to the words will work hardship on the defendant. Of course, it will; but that does not entitle the court to read into the Act words which are not there, or to give the words that are clear a meaning other than that which they bear." MacKinnon, L.J.'s observations were less dispassionate and, in fact, somewhat exaggerated the position: allusions to the possibility of standard rent being fixed by reference to a previous letting at a nominal rent, or a letting of 500 years ago, rather ignore the principle that only a tenancy to which the Act would apply can determine a standard rent: *Veale* v. *Cabezas* [1921] W.N. 311 had established that a letting at less than two-thirds of the rateable value would be ignored, and had been followed in *Joy* v. *Eppner* [1925] 1 K.B. 362. Evidence of a tenancy 500 years ago, since when, as MacKinnon, L.J., pointed out, the value of money had altered, would also raise the interesting question whether the letting of a dwelling-house which had had no rateable value at all could fix a standard rent.

However, it is obvious that in this case the writer of the article would, if he had resisted the claim, have obtained judicial sympathy but not a judgment.

The repairs increase

But his experiences in the matter of the Housing Repairs and Rents Act, 1954, may usefully be read in juxtaposition to two recent items in this Journal: the first "Current Topic" in our issue of 21st July (*ante*, p. 535), and a short article entitled "Bureaucracy on the Defensive" in that of 14th July (*ante*, p. 517). That is to say, he did not find the Act a failure for the reason suggested in the "Current Topic," the necessity for filling in complicated forms; this work appears to have been done by his faithful agents in a spirit of "cheerful optimism." But he did find that the tenant, with whose requests for repairs he had always complied, had not the slightest difficulty in obtaining a certificate of disrepair from the local council. Two significant circumstances are then recorded: (i) the agents told him that it was the landlords' responsibility to keep their houses in apple pie order as the law required; (ii) according to his tenant: "I had had the impertinence to ask for an increase in rent and he, *aided by a solicitor*, soon decided that he had the law on his side and that he could teach me a lesson." The joint effect was that the writer sold the house to his tenant for £225, being "driven into a corner" by somebody "with the full force and majesty of the law behind him," and "Who was I to struggle against a series of Acts of Parliament ranging from 1875 to 1954?"

The writer was, by the time the tenant or his solicitor served him with a copy of the certificate of disrepair pursuant to the Housing Repairs and Rents Act, 1954, s. 26 (2), no doubt throughly demoralised and susceptible to the temptation referred to in the above-mentioned article on "Bureaucracy on the Defensive," the temptation to accept without question the findings of an experienced and trusted official.

The story is indeed a hard luck story, but much of the hard luck was due to meek acceptance of this kind: if the recipient had but looked at the notes to the certificate he would have seen (i) that "apple pie order" grossly exaggerates the requirements (Note 14), and (ii) how to seek judicial annulment of the certificate (Note 22). And much of the demoralisation and hard luck might have been averted if, as I suggested in my second paragraph, he had from time to time sought legal advice, without necessarily "displaying the zeal for the elucidation of the law" remarked upon by Scrutton, L.J., in *Goldsmith* v. *Orr* [1920] 89 L.J.K.B. 901 (C.A.). For, as Greene, M.R., said in *Cumming* v. *Danson* [1942] 112 L.J.K.B. 145 (C.A.) the Acts are "Acts for the protection of tenants, and not Acts for the penalising of landlords."

Lastly, those who have been reminded of the cobbler who, as described in Ch. 44 of the "Pickwick Papers," was ruined by being left money, may also recall some evidence that woes connected with the ownership of houses did not begin in 1954 or even in 1875. For Sam Weller's second guess was: "You bought houses, which is delicate English for goin' mad." Goddard, L.J., put it less forcefully when he said in *Davies* v. *Warwick*, *supra*: "So, as Warwick finds to his cost, house property is a dangerous form of investment . . ."; but I hope to have shown that capital and sanity may be preserved by seeking expert guidance.

R. B.

The annual general meeting of the HAMPSHIRE (INCORPORATED) LAW SOCIETY was held at Portsmouth on 3rd July, 1956. The following officers were elected: president—Mr. Kenneth F. Allen (Portsmouth); vice-president—Mr. B. L. Bremridge (Winchester); hon. secretary and treasurer—Mr. C. G. A. Paris (Southampton); assistant hon. secretary—Mr. L. F. Paris (Southampton). The following were elected to serve on the committee: Mr. G. P. Brutton (Portsmouth), Mr. R. E. Churcher (Gosport), Mr. J. M. F. Peters (Fareham), and Mr. J. Bradly Trimmer (Alton).

HERE AND THERE

EUPHEMISMS

THE search for more elaborate and euphonious synonyms for clear, simple expressions and conceptions goes on. It is some years now since the ratcatcher achieved official recognition as a rodent operative, and one would have hoped that by this time everybody, including even the former ratcatchers, would have seen the joke and that they might have been glad to slip back into the happy rhythms of the old ballad about "the pretty little ratcatcher's daughter," who suggests a far more provocative personality than would "the pretty little rodent operative's daughter." But solemnity and verbal inflation are apparently infectious and now the sanitary inspectors, not mindful of the honourable Latin etymology of their title quite adequately descriptive of their concern with health, have actually promoted a Bill in Parliament to compel their fellow citizens by law to call them public health inspectors. The Sanitary Inspectors (Change of Designation) Act should surely have contained some terror-inspiring penal provision prescribing appropriate punishment for all who by word, gesture or jest may in future derogate from the dignity of these valuable public officials. In the mid-twentieth century's growing collection of question-begging euphemisms one must award a high place to Mr. John Strachy's discovery of "relative immiseration," meaning that you have a grievance because you're not as well off as somebody else. The newly qualified solicitor or barrister is relatively immiserated because, while he lunches on sandwiches and a glass of milk, the Lord Chancellor, whom he has only the remotest chance in the world of eventually succeeding, eats comfortably at the House of Lords or at the high table of his Inn of Court. In simpler times it used just to be called plain envy and a capital sin. Even convicted persons are not excluded from the benefits of this lexicographical manna rained down from aloft to sustain the morale of the community. If you want to be really abreast of current prison terminology you must not any longer refer to the "escape" of a prisoner. It is "dematerialisation" now as if he were a blessed spirit slipping beyond the reach of the five senses into a region of light and peace. To "dematerialise," according to the Oxford English Dictionary, is to "deprive of material character or qualities," to "render immaterial." Amid all this fuss about finding nice soothing names for embarrassing realities, it is strange that the advocates of the retention of capital punishment never thought of that one. Instead of the bald and brutal "Crippen was hanged this morning," how much more agreeable to the refined and humane mind would be the announcement that "Crippen was dematerialised this morning," with its sense of the escape of the essential Crippen into a larger, freer life. The Russians, of course, gave that particular sort of linguistic twist to "liquidation," but the rather cold scientific ring of the word, as well as the very broad revolutionary conception of what it covered, somewhat detracted from its charm as a euphemism.

BRISTOL FASHION

IT was in the House of Lords, in the course of a debate on prisons, that Lord Mancroft mentioned this little matter of "dematerialisation." It is apparently part of the technical terminology of an establishment in Bristol where the very latest ideas of prison reform are being put into practice. The inmates (one hardly likes to call them prisoners) live in conditions somewhat equivalent to those of a youth hostel; they go out to work in the city each day, receive normal wages and actually pay for being kept in prison. One hopefully envisages a future in which eventually the Prison Commissioners will preside over the first public enterprise to show a steady profit with establishments all ship-shape and Bristol fashion to which voluntary patients will flock for courses in social good health and pay for the service. If it were possible to let the thing grow gradually and naturally by its own merits, something like it might happen. What would wreck the whole notion would be for some ambitious politician, greedy of all the credit here and now, or a knot of unrealistic reformers determined to see a grove of oak trees spring up overnight like beanstalks, to force through a universal Bristolisation of prisons without regard to the quality of the staff available (for it would require staff of very special quality) or the extent to which experience of the system on a small scale had suggested principles for its wider application. The greedy politicians and the simple-minded reformers (who so often find themselves in incongruous alliance) would pour out public money on an immature scheme (like a bad farmer sowing badly prepared ground), produce unsatisfactory results and arouse general hostility to the whole idea among the taxpayers who had to pay for their impatience. As the ancient Roman said: *Festina lente.* That the idea of reforming prisoners with their own co-operation is not as silly as it sounds sometimes receives encouragement from unexpected quarters. In the right circumstances the oddest people can behave remarkably well. We now know what Alfred George Hinds, described by the Lord Chief Justice as "a most dangerous criminal," was doing during his recent dematerialisation. He had settled down in Ireland in a four-roomed cottage at Greystones and turned into a highly respected decorator and contractor. No one had a word to say against him and the local policeman said: "Sure, I knew him well. He seemed a perfect gentleman, quiet and law abiding. As far as we were concerned he was a most respectable citizen." And his dematerialisation lasted 249 days. On the face of it he looks like a candidate for Bristol.

RICHARD ROE.

The following candidates have been duly elected to fill the twenty-five vacancies upon the Bar Council: *Queen's Counsel*—Sir Godfrey Russell Vick, Mr. Gerald Gardiner, Mr. David Karmel, Mr. J. E. S. Simon, M.P., Mr. J. di V. Nahum, Mr. M. A. B. King-Hamilton, Mr. Norman Skelhorn, Mr. J. A. Plowman, Mr. D. H. Robson, Mr. J. T. Molony, Mr. Stephen Chapman and Mr. Michael Albery. *Outer Bar*—Mr. J. A. Petrie, Mr. R. Castle-Miller, Mr. J. C. Llewellyn, Mr. J. A. Brightman, Mr. K. J. T. Elphinstone, Mr. J. F. E. Stephenson, Mr. P. H. B. W. Foster, M.B.E., Mr. R. B. C. Parnall, Mr. J. L. Arnold, and Mr. J. F. Donaldson. *Under ten years' standing at the Bar*—Mr. K. Bruce Campbell, Mr. P. R. Oliver, and Mr. J. F. Kingham.

A series of classes for solicitors' junior clerks has been arranged for the coming winter. The classes will be held on Monday and Wednesday evenings at 6.15 p.m., in the Lord Chief Justice's court, commencing on 1st and 3rd October next. Further details and applications for tickets are now available at the offices of the Solicitors' Managing Clerks' Association, Maltravers House, Arundel Street, Strand, London, W.C.2.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

AUSTRALIA: GRANT OF CROWN LANDS: WHETHER PETROLEUM RESERVED

Midland Railway Co. of Western Australia, Ltd. *v.* State of Western Australia

Lord Oaksey, Lord Radcliffe, Lord Tucker and Lord Cohen

11th July, 1956

Appeal and cross-appeal from the Supreme Court of Western Australia.

By the terms of a contract entered into in 1886 between one Waddington, whose rights and interests thereunder were assigned to the appellant in 1890, and the Government of Western Australia, it was provided, *inter alia*, that the government would "grant in fee simple to the contractor by Crown grants in the form prescribed by the Land Regulations of the Colony" a subsidy in land at the rate of 12,000 acres for every mile of the 250 miles of railway which the contractor was to build under the contract. The form of grant in fee simple prescribed by the then Land Regulations of 1882 reserved "all mines of gold, silver, and other precious metals in and under the said land." The Western Australia Constitution Act, 1890, which by s. 3 vested the management and control of the waste lands of the Crown in Western Australia in the Legislature of the Colony, provided by s. 4 (2) that: "Nothing in this Act shall affect any contract or prevent the fulfilment of any promise or engagement made before the time at which this Act takes effect in the Colony of Western Australia on behalf of Her Majesty with respect to any lands situate in that Colony . . ." No Crown grants were in fact made pursuant to the contract before the coming into force of the Constitution Act of 1890, but thereafter grants were made in the form prescribed by the Land Regulations, and those grants contained no reservation of petroleum or mineral oil. Grants to the extent of 41,866 acres were also made after the commencement of the Petroleum Act, 1936, of Western Australia, which provided by s. 9 that "notwithstanding anything to the contrary contained in any . . . grant . . . whether made or issued before or after the commencement of this Act, all petroleum, on or below the surface of all land within this State, whether alienated in fee simple or not so alienated from the Crown, is and shall be deemed always to have been the property of the Crown," and s. 10 provided that all Crown grants issued after that Act should contain a reservation of petroleum. A permit having been given in 1952 by the respondent State of Western Australia under the Petroleum Act, 1936, to a petroleum company to explore for petroleum over lands which included lands granted to the appellant pursuant to the contract, the appellant began the present proceedings against the respondent claiming, *inter alia*, a declaration that the Petroleum Act of 1936 and in particular ss. 9 and 10 thereof, had no application to the lands granted to the appellant. The Supreme Court of Western Australia (Dwyer, C.J.) held that the Act of 1936 did not apply to the 41,866 acres granted to the appellant after the coming into operation of the Act, but did apply to other large parcels of land granted to the appellant before the Act of 1936 came into force. The appellant now appealed against the latter decision, and the respondent cross-appealed against the decision that the Act did not apply to the 41,866 acres.

Lord Cohen, giving the judgment, said that on the construction of the contract, and reading it as a whole, it imposed on the Crown no more than an irrevocable obligation to grant a fee simple of the surface of the land in whatever might be the form current at the date when any particular grant was called for, without the addition of a further obligation to ensure that the Legislature would not at any time during the currency of the contract alter the prescribed form of grant. Accordingly, the grants made after the commencement of the Petroleum Act, 1936, were made at a time when under s. 10 of that Act it became obligatory to include a reservation of all petroleum in all Crown grants. With regard to grants made before the Act of 1936, the provisions of s. 4 (2) of the Constitution Act, 1890, did not exempt those grants from the operation of s. 9 of the Petroleum Act, 1936. On the construction as above placed on the contract, it would have involved no breach of it if the Crown, the day after executing it and before the issue of any grant, had decided to modify the Regulations so as to extend the reservation in the form of grant to cover petroleum. The contract by its terms exposed the appellant to the risk of such Acts as the Petroleum Act, 1936, and accordingly the appellant could not be heard to complain if the risk materialised. The appeal would be dismissed, and the cross-appeal allowed.

Appearances: *B. MacKenna*, Q.C., and *R. I. Threlfall* (*Markby, Stewart & Wadesons*); *Sir Garfield Barwick*, Q.C., and *Kevin G. Walsh* (*M. L. Moss & Son*).

[Reported by Charles Clayton, Esq., Barrister-at-Law] **[1 W.L.R. 1037**

MONEYLENDER: UNENFORCEABLE TRANSACTION: RECOVERY OF SECURITY BY BORROWER WITHOUT REPAYMENT OF BALANCE OF LOAN

Kasumu and Others *v.* Baba-Egbe

Lord Radcliffe, Lord Cohen, Lord Somervell of Harrow

17th July, 1956

Appeal from the West African Court of Appeal.

The respondent, who held a building lease of land known as No. 55 Great Bridge Street, Lagos, on 22nd August, 1945, executed a deed of mortgage in favour of Kasumu, a licensed moneylender, by which he assigned the property as security for a loan of £2,000, with interest at 15 per cent. Kasumu went into possession of the property in September, 1946, and thereafter possession or receipt of rents and profits was retained by him and, after his death, by the appellants, who were the administrators of his estate. On 14th February, 1950, the respondent instituted proceedings in the Supreme Court of Nigeria claiming redemption of the property or, alternatively, a declaration that the mortgage was void; an account of rents and profits received; and recovery of possession. The Supreme Court ordered that the respondent was to exercise his equity of redemption and recover the premises after an account had been taken of what was actually owing by him on the mortgage and it had been paid to the estate of Kasumu. After an account had been taken, the Supreme Court gave judgment for the appellants for £1,541 2s. 6d. and interest. On appeal, the West African Court of Appeal substituted for the Supreme Court's orders a declaration that the mortgage transaction, not having been recorded in a book as required by s. 19 of the Moneylenders Ordinance of Nigeria, was unenforceable; an order that the appellants should deliver possession of the premises to the respondent; cancellation of the mortgage and delivery up of the cancelled deeds and the title deeds of the premises. The question in this appeal was whether, as a condition of the relief which he claimed, the respondent should be compelled to repay to the appellants so much of the money lent as was still owing, namely, £1,541 2s. 6d. with interest.

Lord Radcliffe, giving the judgment, said that the decision of the West African Court of Appeal consisted essentially of a weighing of the authority of *Lodge* v. *National Union Investment Co., Ltd.* [1907] 1 Ch. 300 against that of *Cohen* v. *Lester* (*J.*), *Ltd.* [1939] 1 K.B. 504. *Lodge's* case, *supra*, decided that a borrower, as a condition of being granted relief in the form of delivery up of securities (where the transaction was illegal), must repay such of the money borrowed as was still outstanding. It was a decision of a great equity lawyer (Parker, J.); nevertheless, it could not be treated as having established any wide general principle that governed the action of courts in granting relief in moneylending cases. In *Chapman* v. *Michaelson* [1908] 2 Ch. 612, Eve, J., refused to put the representative of a borrower upon any terms as to repayment when granting a declaration that a loan was illegal and void by virtue of the Moneylenders Act, 1900; and his decision was unanimously upheld by the Court of Appeal ([1909] 1 Ch. 238). In *Cohen* v. *Lester* (*J.*), *Ltd.*, *supra*, Tucker, J., refused to impose any terms as to repayment when making an order for the return of a security, the contract and security being in that case rendered unenforceable by virtue of s. 6 of the Moneylenders Act, 1927. Their lordships were of opinion that the principle in *Lodge's* case, *supra*, was not applicable in the case of a transaction declared to be unenforceable by s. 19 of the Moneylenders Ordinance. That Ordinance,

in enacting that no loan which failed to satisfy the statutory requirements was to be enforced, meant that no court of law was to recognise the lender as having a right at law to get his money back. If the court were to impose terms of repayment as a condition of making any order for relief, it would be expressing a policy of its own in regard to such a transaction which was in direct conflict with the policy of the Ordinance. The decision of the West African Court of Appeal was correct. Appeal dismissed. The appellants must pay the respondent's costs.

APPEARANCES: *Phineas Quass*, Q.C., and *R. K. Handoo* (*T. L. Wilson & Co.*); *John Pennycuick*, Q.C., and *Arthur Bagnall* (*Hatchett Jones & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister at-Law] **[3 W.L.R. 575**

House of Lords

ELECTRICITY SUPPLY: "UNDUE DISCRIMINATION"

South of Scotland Electricity Board *v.* British Oxygen Co., Ltd.

Viscount Simonds, Lord Normand, Lord Tucker, Lord Cohen and Lord Keith of Avonholm. 19th July, 1956

Appeal from the Second Division of the Court of Session ([1955] S.L.T. 306).

By s. 37 of the Electricity Act, 1947: ". . . (3) Subject to the directions of the central authority . . . the prices charged by area boards for the supply of electricity by them shall be in accordance with such tariffs as may be fixed from time to time by them . . . (8) An area board in fixing tariffs . . . shall not show undue preference to any person or class of persons and shall not exercise any undue discrimination against any person or class of persons, and the central authority shall, in exercising their powers under this section in relation to the fixing of tariffs and making of agreements by area boards, secure compliance by area boards with this subsection." The company received electricity from the board for industrial purposes at a voltage metered above 6,000 (high voltage). They sought a declaration that in fixing three successive industrial demand tariffs the board had exercised undue discrimination against high voltage consumers. The amount of fuel required to produce electricity at high voltage was substantially less than that required to produce the same amount at low voltage. The first tariff granted the high voltage consumers a fair differential reflecting the fuel costs, when fuel cost 38s. a ton, by fixing the original unit charges for them at ·45d. and for the low voltage consumers at ·475d. But it was complained that the fuel variation clause (providing for the increase or reduction of the unit charge if the cost of fuel was more or less than 38s. a ton) vitiated the tariff, when fuel costs rose, by distributing the additional cost equally per unit between the two sets of consumers. Similar complaints were made of the other two tariffs. The Second Division, varying the interlocutor of the Lord Ordinary, held that, although precise equality between different classes of consumers was not required, the court, in determining whether there was undue discrimination, might consider whether the charges levied on a particular class of consumer were excessive, and that a proof before answer should be allowed. The board and the authority appealed to the House of Lords.

VISCOUNT SIMONDS said that he concurred with the opinion of Lord Normand and that the appeal should be dismissed with costs.

LORD NORMAND said that before the Lord Ordinary the appellants said: (1) that a "discrimination" was not an "undue discrimination" within s. 37 (8) unless it had been exercised for illegitimate reasons, and (2) that the high voltage consumers and low voltage consumers did not constitute two "classes" within s. 37 (8). On the first point, the respondents answered that excessive discrimination might be "undue discrimination." The Lord Ordinary accepted the argument of the appellants but the Second Division rejected it. His lordship agreed with the Second Division (*Phipps* v. *London and North Western Railway Co.* [1892] 2 Q.B. 229; *A.-G.* v. *Long Eaton Urban District Council* [1914] 2 Ch. 251; [1915] 1 Ch. 124, and *A.-G.* v. *Wimbledon Corporation* [1940] Ch. 180). On the second point, the Second Division held that the appellants' contention failed. Again his lordship agreed. The appellants argued that the two classes must be in competition. But in our time all industries were in competition for capital, labour and public favour. The customer's choice between buying an article of dress, a piece of furniture or a bicycle often depended on the prices and on his purse and there was effective competition between the most heterogeneous products. There should be proof before answer and the appeal should be dismissed. At the hearing of the appeal the appellants submitted a new argument not stated in the courts below. They said that the high voltage consumers were charged less under all the tariffs and that the test whether preference had been shown to one class as compared with another was simply a matter of price, so that the preference was shown to the high voltage consumers who paid less and the discrimination was against the low voltage consumers who paid more. The House sometimes entertained a question which had not been argued in the courts below, when justice required it. But in the present case justice did not so require. It would be a grave departure from correct practice to allow it to be thought that when leave to appeal was granted the appellant had the right to expect that any new question which he chose to raise would be entertained by the House. It would be open to the appellants after proof to take this point.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *J. O. M. Hunter*, Q.C. (of the English Bar, Q.C. of the Scottish Bar), *E. S. Fay* (of the English Bar), and *R. M'Donald* (of the Scottish Bar) (*R. A. Flinn*, for *Campbell, Smith, Mathison & Oliphant*, W.S., Edinburgh, *Wright, Johnston and Mackenzie*, Glasgow, and *Biggart, Lumsden & Co.*, Glasgow); *Sir Andrew Clark*, Q.C. (of the English Bar), *Ian Shearer*, Q.C., and *W. Hook* (both of the Scottish Bar) (*Simpson, North, Harley & Co.*, for *Pringle & Clay*, W.S., Edinburgh).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[1 W.L.R. 1069**

Court of Appeal

SPECIALLY ENDORSED WRIT: WRIT ENDORSED WITH NOTICE UNDER R.S.C. ORD. 14B: REMEDIES UNDER R.S.C. ORD. 14 AND ORD. 14B NOT CONCURRENT

Commissioners of Customs and Excise *v.* Anco Plant and Machinery Co., Ltd.

Jenkins and Hodson, L.JJ. 3rd July, 1956

Appeal from Collingwood, J.

Paragraph 10 of Sched. VII to the Customs and Excise Act, 1952, provides: "(1) In any proceedings for condemnation instituted in England, Wales or Northern Ireland, the claimant or his solicitor shall make oath that the thing seized was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure; (2) In any such proceedings instituted in the High Court, the claimant shall give such security for the costs of the proceedings as may be determined by the court; (3) If any requirement of this paragraph is not complied with, the court shall give judgment for the commissioners." The plaintiffs, the Commissioners of Customs and Excise, by specially endorsed writ under R.S.C. Ord. 3, r. 6, claimed judgment condemning certain goods seized by them as forfeited pursuant to the Customs and Excise Act, 1952, Sched. VII, para. 6; and pursuant to para. 10 (1) of that Schedule required the defendants to make oath that the goods were the property of the defendants. The writ was endorsed with a notice pursuant to R.S.C. Ord. 14B, r. 1, that: "If the defendants enter an appearance to this writ the plaintiffs shall apply under R.S.C. Ord. 14B of the Rules of the Supreme Court for trial without further pleadings." Subsequently, the plaintiffs applied by summons asking under R.S.C. Ord. 14 for leave to enter judgment unless the defendants should make the required oath as to ownership of the goods and, in the alternative under R.S.C. Ord. 14B, that the action should be entered for trial without further pleadings. The master made an order in the first of the two alternatives sought by the summons, namely, he made an order under R.S.C. Ord. 14 giving to the defendants conditional leave to defend. The judge in chambers reversed his decision and made an order in the second alternative, namely, under R.S.C. Ord. 14B. The Commissioners appealed.

JENKINS, L.J., said that counsel for the defendants had raised in the forefront of his argument an objection to the effect that the appeal was an appeal from an order of a judge giving

unconditional leave to defend, which was not a proper subject for appeal to the Court of Appeal in view of s. 31 (1) (*c*) of the Judicature Act, 1925, which provided that: "No appeal shall lie . . . from an order of a judge giving unconditional leave to defend an action." Counsel for the Commissioners had argued that the order made by the judge was not an order giving unconditional leave to defend, but merely an order ruling that relief under R.S.C. Ord. 14 could not be obtained in circumstances such as existed in the present case, that is to say, in a case where the plaintiff had elected, by including the appropriate note on his writ, to proceed under R.S.C. Ord. 14B. He (his lordship) found it impossible to accept the latter argument. The position was that the master made an order giving the defendants conditional leave to defend. That order was an order which could only be made under R.S.C. Ord. 14. The order which came before the judge being an order granting conditional leave to defend under an application purporting to have been made under R.S.C. Ord. 14, the judge allowed the appeal and gave the appropriate directions under R.S.C. Ord. 14B. It seemed to him (his lordship) that, by allowing the defendants' appeal from an order giving conditional leave, what the judge did was to grant unconditional leave to defend; and if that was right, there was an end of the application, because of the prohibition against any appeal from such an order contained in s. 31 (1) (*c*) of the Judicature Act, 1925. His lordship further observed that r. 2 (1) of R.S.C. Ord. 14B was imperative in its terms and that once a plaintiff had elected to proceed under R.S.C. Ord. 14B, by including the appropriate notice on his writ, he could not combine proceedings under R.S.C. Ord. 14B with proceedings for summary judgment under R.S.C. Ord. 14. In those circumstances, he (his lordship) held, first, that the Court of Appeal had no jurisdiction to entertain the appeal, and secondly, that, even if there was jurisdiction to hear it, the appeal must fail for the subsequent reasons which he had given.

HODSON, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *Rodger Winn* (*M. G. Whittome*); *W. R. Rees-Davies* (*Philip Conway, Thomas & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[1 W.L.R. 1048**

DISTRIBUTION OF FUNDS CONTRIBUTED FOR BUILDING NEW HOSPITAL: OBJECTIVE IMPRACTICABLE: WHETHER FUNDS HELD ON RESULTING TRUST

***In re* Ulverston and District New Hospital Building Trusts; Birkett and Others *v.* Barrow and Furness Hospital Management Committee and Others**

Lord Evershed, M.R., Jenkins and Hodson, L.JJ. 13th July, 1956

Appeal from the Chancery Court of the County Palatine of Lancaster, Manchester Division.

Between 1924 and 1942 appeals were made for contributions to a fund known as the Ulverston and District New Hospital Building Fund. The response to the appeals was insufficient to carry out the purpose of the fund and, the National Health Service Act, 1946, having come into force, the trustees sought the direction of the court as to what should be done with the money in their hands, some of which had been contributed by named donors and the rest collected from unidentifiable sources, such as anonymous donors, street collections, entertainments, etc. Sir Leonard Stone, V.-C., having found that the sole objective of the appeal was the building of a new hospital at Ulverston and its maintenance, held that, that purpose having become impracticable, the donors, so far as identifiable, were entitled to a return of such proportion of the fund as their contribution bore to the total funds collected, which at the relevant time amounted with accumulations of income to about £32,000. The Attorney-General of the Duchy of Lancaster appealed.

JENKINS, L.J., delivering the first judgment, said that he agreed with the Vice-Chancellor that the fund had been collected with the sole object of building and maintaining a new hospital and not for the general charitable purpose of improving facilities for medical and surgical treatment in the districts to be served by the hospital. The Attorney-General of the Duchy had submitted that a general charitable intent should nevertheless be imputed to the donors to the fund because they must be taken to have known that their contributions would be mixed with contributions received in circumstances which indicated that the donors would not expect to get their money back, and hence to have given it irretrievably to charity. He (his lordship) would have thought, however, that it was arguable that the anonymous donors might have intended to subscribe to the particular purpose and to nothing else and not to have formed any intention as to what was to be done if that purpose became impossible of fulfilment. On that view the anonymous contributions would be *bona vacantia*. Even if, however, a charitable intention should be imputed to the anonymous donors that afforded no ground for imputing a general charitable intention to identifiable subscribers whether they knew that anonymous contributions had been made or not. *In re Welsh Hospital* (*Netley*) *Fund* [1921] 1 Ch. 655 was distinguishable partly on the language of the appeal and also because it was concerned with the disposal of a surplus remaining after the immediate purpose for which the fund had been raised had been fulfilled. The present case was one of total failure *ab initio*. Reference was also made to *In re Monk* [1927] 2 Ch. 197 and to *In re Wokingham Fire Brigade Trusts* [1951] Ch. 373. *In re Hillier's Trusts* [1954] 1 W.L.R. 700 was a case of failure *ab initio*, but in that case there were grounds for imputing a general charitable intention to the subscribers and the remarks of Evershed, M.R., as to the relevance of the contributions from anonymous subscribers when assessing the intention of the identifiable subscribers had to be read with reference to the facts of that case where the circumstances in which the fund was raised were equivocal as to the intention of the named contributors. The judgment of Denning, L.J., which went further than that of Evershed, M.R., and beyond what was necessary for the decision of the case, did not, in his lordship's opinion, represent the view of the court.

HODSON, L.J., and LORD EVERSHED, M.R., agreed. Appeal dismissed.

APPEARANCES: *E. Milner Holland*, Q.C., and *P. A. Ferns* (*Solicitor to the Duchy of Lancaster*); *R. C. Seddon* (*Hatchett, Jones & Co.*, for *Frank Jackson*, Ulverston); *Raymond Jennings*, Q.C., and *H. C. Easton* (*Haslewood, Hare, Shirley Woolmer and Co.*, for *Aston, Harwood, San Garde & Green*, Manchester).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[3 W.L.R. 559**

Chancery Division

REVENUE: DOUBLE TAXATION RELIEF: REPAYMENT OF TAX OVER-PAID IN U.S.A.: ALTERATION IN RATE OF EXCHANGE

Greig (Inspector of Taxes) *v.* Ashton

Harman, J. 6th July, 1956

Appeal from the Commissioners for the Special Purposes of the Income Tax Acts.

A taxpayer resident in the United Kingdom in 1946 paid some $24,000 to the United States tax authorities in respect of her earnings as a writer there. In 1950, she was repaid some $12,000 odd in respect of tax over-paid. In 1946, the rate of exchange was $4 to the £ sterling, but by 1950 the rate of exchange had fallen to $2·80 to the £. She was entitled under the Convention between the Governments of the United Kingdom and the United States (reproduced in the Double Taxation Relief (Taxes on Income) (U.S.A.) Order, 1946) and under Sched. XVI to the Income Tax Act, 1952, to credit against any United Kingdom taxes payable in respect of income in the United States which had borne tax there; and the Crown contended that the alteration in the rate of exchange when the credit was repaid should be taken into account when the taxpayer's credit under the Convention was adjusted by reason of the repayment of tax in 1950.

HARMAN, J., said that here the ultimate tax for which the taxpayer was liable in respect of this source of income was some $11,000, and that was the credit for which she applied and which she obtained against her United Kingdom liability for these same profits. That would have been the end of the matter but for the fact that, when she got the relief in 1950, the rate of exchange between the United Kingdom and the United States had altered from that which it was in 1946 or 1947. The result was that, if by reason of the dilatory repayment made by the United States fiscal authorities the tax was repaid at a time when dollars were

2·80 to the £, she would in a sense have made a profit on the exchange. It was that profit in effect which the Crown sought to charge by way of additional assessment. Her contention was that this was quite wrong, because the credit to which she was entitled was credit against her tax for the year 1947, and in fact what she had had was too great a credit, and a readjustment in the amount of the credit ought to be made; but the whole transaction was that which was or should have been completed in 1947, when the state of things then ruling had to be the governing factor. To that the Crown answered that there should have been two transactions: first, the credit of $24,000 in 1947; then, when she in fact recovered some $12,000-odd of those $24,000, they could say that those were theirs, because they gave her too much credit, and when she received the repayment the rate was $2·80 to the £; and that was the rate at which they were entitled to treat themselves as in credit against her. All this was highly artificial, because in fact none of those things had happened. There never was any claim by the taxpayer of a credit of $24,000. She claimed credit for $11,000 at the rate of $4 to the £; that was the credit she got and that was the right credit she should have had, because that followed the words of art. XIII of the Convention. The fact that the United States authorities were slow about repaying or that the exchange had altered in the meanwhile was, when looked at carefully, entirely irrelevant. It had nothing to do with the Crown at all. The special commissioners were right in upholding the taxpayer's contention, and the Crown's contention was wrong. He had been told that some question of principle was involved, and that he ought to make some kind of rule that would apply to all cases. He was quite unable to do that. The alteration in the rate of exchange was purely an outside circumstance which had nothing to do with the liability for tax nor the way in which the Convention ought to be related to the law. What effect that had on other cases he need not consider. Appeal dismissed.

APPEARANCES: *J. G. Foster*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *Hilary Magnus* (*Heald, Johnson, Garten & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 1056**

Queen's Bench Division

TRADE DISPUTE: JURISDICTION OF INDUSTRIAL DISPUTES TRIBUNAL: BREWERY: "SECTION OF TRADE OR INDUSTRY"

R. *v.* Industrial Disputes Tribunal; *ex parte* Courage and Co., Ltd.

Lord Goddard, C.J., Ormerod and Donovan, JJ. 12th July, 1956

Application for an order of prohibition.

In December, 1955, a group secretary of the Transport and General Workers Union put forward a demand on behalf of about 10 per cent. of the employees of a brewery company, who were members of the union, for an increase in wages. This demand was refused by the employers and the matter was reported by the union to the Minister, who referred it to the Industrial Disputes Tribunal. The employers applied for an order of prohibition to prevent the tribunal from proceeding with the reference on the grounds that there was no dispute between the employers and their workers and that the union did not represent a substantial proportion of the workers in the company's employ.

LORD GODDARD, C.J., said that the word "undertaking" in art. 1 of the Industrial Disputes Order, 1951, meant a unit such as a factory or, as in the present case, a brewery. The dispute might therefore arise, not in the trade generally, but in one particular undertaking. If it did happen to be in one particular organisation, an order might be made referring the dispute if a report was made by a trade union that represented a substantial proportion of workers in the trade or industry or a section of the trade or industry concerned. "Section" clearly referred to functions and not to localities. It did not refer, for instance, to all breweries in Hampshire or Sussex, but to the section of trade or industry which was some particular part of the trade or industry. In the present case it was clear that there was a dispute. The employers had refused to grant the increase. The secretary had sworn in an affidavit that the workers in the brewery who were members of the union had authorised him to make the report. It was not necessary to show that a substantial proportion of the workers in the applicants' brewery were represented by the union. Accordingly, it was the duty of the Minister to refer the dispute to the tribunal and the order for prohibition should be refused.

ORMEROD and DONOVAN, JJ., gave concurring judgments. Application refused.

APPEARANCES: *John Hobson* (*Speechly, Mumford & Craig*, for *Lamport, Bassitt & Hiscock*, Southampton); *N. R. Fox-Andrews*, Q.C., and *Michael Lee* (*G. Howard & Co.*); *S. B. R. Cooke* (*Solicitor, Ministry of Labour and National Service*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1062**

FACTORY: PROTECTION OF EYES: DRILLING HOLES IN CONCRETE: WHETHER "CUTTING" CONCRETE

Fallaize *v.* Troughton & Young, Ltd.

Lord Goddard, C.J., Ormerod and Donovan, JJ.

16th July, 1956

Case stated by Warwick justices sitting at Coleshill.

An employee of the defendants, who were engaged in installing electric cables in a partially constructed power station, was drilling holes, approximately ⅜-inch in diameter, which were to contain rawlplugs, in a reinforced concrete ceiling. For that purpose the employee was using a Kango hammer, a portable tool driven by an electric motor, to which was fixed a chisel or bit which consisted of a long piece of metal pointed at the end with four cutting edges. The defendants were charged with a contravention of reg. 84 of the Building (Safety, Health and Welfare) Regulations, 1948, in that they failed to provide goggles or effective screens to protect their workmen's eyes while engaged in a process specified in Sched. II to the regulations, namely: "Cutting . . . concrete . . . by means of a portable tool driven by mechanical power." The justices dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that the justices thought that the process did not involve cutting. The court did not take that view. One could not make a hole without cutting out the stone. Drilling holes in concrete involved cutting because one cut the stone or concrete out to put something else in. For those reasons the justices were wrong, and the case should go back with a direction to convict.

ORMEROD and DONOVAN, JJ., agreed. Appeal allowed.

APPEARANCES: *S. B. R. Cooke* (*Solicitor, Ministry of Labour and National Service*); *John Thompson*, Q.C., and *E. G. H. Beresford* (*Buller, Jeffries & Kenshole*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1079**

THE SOLICITORS ACTS, 1932 TO 1941

On 26th July, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to1941, that there be imposed upon RICHARD PATE, of 18 Willow Street, Accrington, a penalty of £250, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and enquiry.

On 26th July, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon STUART HERMON LEWIS, of Crown House, Aldwych, London, W.C.2, and Wych End, Woking, Surrey, a penalty of £50, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and enquiry.

On 26th July, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of DAVID EDMUNDS REES, of Central Chambers, Cardiff Road, Caerphilly, and Shingrig House, Nelson, Glam, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

IN WESTMINSTER AND WHITEHALL

ACTS PUBLISHED

Some Acts now published which may be of interest are as follows :—

Local Government Elections Act, 1956

To provide for the simultaneous holding of elections of rural district councillors and parish councillors ; to require the expenses incurred in relation to the holding of elections of parish councillors to be paid by the council of the rural district within which the parish is situate ; to provide for excluding certain days in computing the period of time within which elections to fill casual vacancies occurring in the offices of county, borough and district councillor and elective auditor are required to be held ; and for purposes connected with the matters aforesaid.

Sugar Act, 1956

To provide for the establishment of a Sugar Board, and to make provision as to the functions and finances of the Board, including provision for a surcharge on sugar and molasses and provision for distributing any surplus revenues of the Board ; to make further provision as respects the British Sugar Corporation Limited, to dissolve the Sugar Commission, and otherwise to make new provision as respects the sugar industry in, and the importation of sugar and related goods into, the United Kingdom ; and for purposes connected with the matters aforesaid.

Teachers (Superannuation) Act, 1956

To amend the Elementary School Teachers (Superannuation) Act, 1898, the Teachers (Superannuation) Acts, 1918 to 1946, and so much of the Education (Scotland) Acts, 1939 to 1953, as relates to superannuation and to the employment of teachers over the age of sixty-five years ; and for purposes connected therewith.

Workmen's Compensation and Benefit (Supplementation) Act, 1956

To provide for the payment of allowances out of the Industrial Injuries Fund with a view to supplementing workmen's compensation and benefit, and for purposes connected therewith.

ROYAL ASSENT

The following Bills received the Royal Assent on 2nd August :—

Aberdeen Harbour Order Confirmation
Appropriation
Barnsley Corporation
British Caribbean Federation
British Transport Commission
Cammell Laird and Company
Chertsey Urban District Council
Coal Industry
Croydon Corporation
Department of Scientific and Industrial Research
Felixstowe Dock and Railway
Finance
Fylde Water Board
Governors' Pensions
Grayson, Rollo and Clover Docks
Heywood and Middleton Water
Hotel Proprietors
Huddersfield Corporation
Leeds Corporation
Liverpool Overhead Railway
London County Council (General Powers)
Manchester Corporation
Manchester Ship Canal
Marriage (Scotland)
Mersey Docks and Harbour Board
Middlesex County Council
Millport Piers (Amendment) Order Confirmation
Newcastle upon Tyne Corporation
Overseas Resources Development
Pier and Harbour Order (Great Yarmouth Port and Haven) Confirmation
Pier and Harbour Order (Wisbech Port and Harbour) Confirmation
Public Works Loans
Restrictive Trade Practices
Rhyl Urban District Council
Road Traffic
Rugby Corporation
Sanitary Inspectors (Change of Designation)
Sexual Offences
Slum Clearance (Compensation)
Transport (Disposal of Road Haulage Property)
Underground Works (London)
Valuation and Rating (Scotland)
Walthamstow Corporation

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Affiliation Proceedings Bill [H.L.] [1st August.
To consolidate the enactments relating to bastardy, with such corrections and improvements as may be authorised under the Consolidation of Enactments (Procedure) Act, 1949.

Crown Estate Bill [H.C.] [30th July.

Read Second Time :—

Nurses Bill [H.L.] [31st July.
To consolidate certain enactments relating to nurses and assistant nurses for the sick.

Nurses Agencies Bill [H.L.] [31st July.
To consolidate certain enactments relating to agencies for the supply of nurses.

South of Scotland Electricity Order Confirmation Bill [H.C.] [2nd August.
To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to South of Scotland Electricity.

Read Third Time :—

Medical Bill [H.L.] [1st August.

B. Questions

Magistrates and Driving Offences

Lord Silkin, on behalf of Lord Archibald, asked whether the Government would consider taking further steps to bring to the notice of magistrates the pronouncements made by the Lord Chancellor during the debates on the Road Traffic Bill regarding penalties for certain driving offences, and in particular whether they would send a copy of those pronouncements to all magistrates' clerks, as the Press had virtually ignored them and the Magistrates' Association comprised only about 50 per cent. of all magistrates.

The Lord Chancellor replied that he would be glad to consider the suggestions. As he had pointed out during the Report stage of the Road Traffic Bill, this might well be the last chance of voluntary serious consideration of one of the greatest evils of our time. A serious effort must therefore be made to use the voluntary thought and good sense of magistrates if consideration of minimum sentences either of fine or imprisonment was to be avoided. However, as he had also pointed out during the debates, the Executive must never interfere with the Judiciary in the exercise of their work ; and, therefore, no member of the Executive should do anything which might appear to be giving instructions to the magistrates. He would like, therefore, a further opportunity of considering the proposals in the light of that constitutional principle. [30th June.

Legal Aid Scheme

The Lord Chancellor said that under the Legal Aid Scheme legal aid could be withdrawn from an assisted person when the Committee considered that he no longer had reasonable grounds for the proceedings, or that in the particular circumstances it was unreasonable for him to continue to receive legal aid. The committees could not, however, enter into any pre-trial of the issues involved, but he had no information that they were limiting their decisions to cases where it could be shown by the defendant's evidence that the plaintiff had no case, or no case such as was likely to succeed. [31st July.

Land Registration (Delays)

The Lord Chancellor gave the following table showing the average number of working days taken to complete first registration of title and to register dealings during the year 1955 and in June, 1956. The delays were being steadily reduced and special arrangements were made for expedition in cases of hardship or inconvenience.

	Compulsory Areas		Non-Compulsory Areas	
	First Registrations	Dealings	First Registrations	Dealings
1955	59 days	42 days	75 days	48 days
June, 1956 ..	37 days	33 days	70 days	40 days

[1st August.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Public Bodies (Admission of the Press to Meetings) Bill [H.C.] [1st August.

To provide for the admission of representatives of the Press to the meetings of certain bodies exercising public functions.

B. Questions

United Kingdom and Irish Republic (Judgments)

The Attorney-General said that judgments obtained in the United Kingdom could be sued on in the courts of the Irish Republic and vice versa. Under existing legislation arrangements could be made by Order in Council for the judgments of superior courts of the Irish Republic being entered as judgments here without a further acton being instituted, if similar arrangements were made in the Irish Republic. [30th July.

Damages (Straying Animals)

The Attorney-General said that the recommendations of the Goddard Committee for an alteration of the law in regard to liability for damage done by straying animals were linked with other recommendations which had proved somewhat controversial. He could hold out no hope of legislation at present. [30th July.

Enforcement of Maintenance Orders

Mr. J. Stuart said that the Lord Advocate had asked the Scottish Law Reform Committee to consider the recommendation of the Royal Commission on Marriage and Divorce that provision should be made to facilitate the enforcement in other Commonwealth countries of orders for aliment made by the Scottish courts and the enforcement in Scotland of orders for maintenance made by the courts of those countries. [31st July.

Deportation Orders (Appeals)

The Home Secretary made the following statement :—

The European Convention on Establishment, to which the United Kingdom recently became a party, provides that, except where imperative considerations of national security otherwise require, a national of any contracting party who has been lawfully residing for more than two years in the territory of any other party shall not be expelled without first being allowed to submit reasons against his expulsion and to appeal to, and be represented for the purpose before, a competent authority or a person or persons specially designated by the competent authority. Although the Convention expresses only the agreement of the members of the Council of Europe who have signed it, it seems right that the safeguards for which it provides against arbitrary expulsion should be made available to aliens in general and not merely to the nationals of member States.

The Chief Metropolitan Magistrate, to whom I am greatly indebted for his ready help, has agreed that he and his colleagues at Bow Street shall be designated by myself, as the competent authority, for the purpose of this provision of the Convention. In future, therefore, when a deportation order has been made, or is contemplated, against an alien otherwise than on the recommendation of a court of law, it will be open to the alien, except in circumstances that are set out later in this Answer, to ask for a hearing by the magistrate of any representations that he may wish to make, either in person or by solicitor or counsel, against the order. The magistrate, after such examination of the objection and the objector as he may deem sufficient, will make a recommendation to me as to whether or not the order shall be carried into effect. I should perhaps make it clear that the function of the magistrate will be advisory : and that while I should normally act on his recommendation, I do not bind myself to do so.

The procedure will not be applicable to cases where a deportation order has been made on grounds of public security ; or on the ground that the alien has landed in the United Kingdom without permission or, having been in the United Kingdom less than two years, has failed to observe the conditions attaching to his stay. [2nd August.

Restrictive Trade Practices (Registration)

Mr. Peter Thorneycroft made the following statement :—

Now that the [Restrictive Trade Practices] Bill has received the Royal Assent I have signed the first Order (the Registration of Restrictive Trading Agreements Order, 1956) making certain classes of agreement subject to registration. It is intended to seek Parliamentary approval of the Order early in the new Session and, if this is given, the Order would come into force on 30th November, 1956. During the three months following that date, particulars of the classes of agreement specified in the Order must be furnished to the Registrar of Restrictive Trading Agreements. The specified classes of agreement are, broadly, those which include restrictions as to prices or other terms or conditions or which involve collective discrimination. They therefore include agreements about common prices and conditions of sale, agreements about level or agreed tendering, agreements under which preferential terms are granted to certain persons or traders, and agreements under which suppliers of goods are confined to certain persons or traders.

Agreements of the classes in question which contain restrictions affecting exports, and which do not affect supply to the home market, do not have to be registered but must, under s. 31 of the Act, be notified to the Board of Trade. I have deposited copies of the Order in the Vote Office. Copies will be on sale to the public on 10th August, 1956. [2nd August.

Damage by Aircraft

Mr. R. A. Butler said that the fact that it might not be possible to identify an aircraft which had caused damage did not prevent compensation being paid by a Government department to the person by whom it had been suffered. [2nd August.

Planning Applications

Mr. Duncan Sandys said that where an applicant for planning permission was not the owner of the premises, most planning authorities inquired on the application form whether the owner had consented to the proposal. [2nd August.

Revaluation (Effects)

Mr. Duncan Sandys said that the Government intended to announce the results of their examination of the effects of the revaluation at the same time as they announced the outcome of their general review of local government finance. [2nd August.

STATUTORY INSTRUMENTS

Agricultural Goods and Services (Marginal Production) Scheme (England and Wales) Order, 1956. (S.I. 1956 No. 1150.) 6d.

Control of Borrowing (Amendment) (No. 2) Order, 1956. (S.I. 1956 No. 1190.) 5d. See p. 574, *ante*.

Control of Gold and Securities (Suez Canal Company) Direction, 1956. (S.I. 1956 No. 1164.)

County of Berks (Electoral Divisions) Order, 1956. (S.I. 1956 No. 1129.) 5d.

Crofters Agricultural Grants (Scotland) Scheme, 1956. (S.I. 1956 No. 1124 (S.52).) 5d.

Crofters Livestock Purchase Loans (Scotland) Scheme, 1956. (S.I. 1956 No. 1123 (S.51).) 5d.

Exchange Control (Payments) (Egyptian Monetary Area) Order, 1956. (S.I. 1956 No. 1163.) 5d.

Food Standards (Butter and Margarine) (Scotland) Regulations, 1956. (S.I. 1956 No. 1145 (S.54).) 5d.
Food Standards (Curry Powder) (Amendment) Regulations, 1956. (S.I. 1956 No. 1166.) 5d.
Food Standards (Tomato Ketchup) (Amendment) Regulations, 1956. (S.I. 1956 No. 1167.) 5d.
Harrogate and Ripon and Pateley Bridge Water Order, 1956. (S.I. 1956 No. 1132.) 5d.
Isle of Man (Customs) Order, 1956. (S.I. 1956 No. 1160.) 5d.
Labelling of Food (Amendment) (Scotland) Regulations, 1956. (S.I. 1956 No. 1146 (S.55).) 5d.
Leeds Ring Road (Seacroft By-Pass (Cross Gates) Extension) Order, 1956. (S.I. 1956 No. 1141.) 5d.
Malvern Water (Lintridge Pumping Station) Order, 1956. (S.I. 1956 No. 1122.) 5d.
Marginal Agricultural Production (Scotland) Amendment Scheme, 1956. (S.I. 1956 No. 1133 (S.53).) 5d.
Post Office Register (Amendment) Regulations, 1956. (S.I. 1956 No. 1178.) 5d.
Public Analysts (Scotland) Regulations, 1956. (S.I. 1956 No. 1162 (S.56).) 5d.
Savings Certificates (Amendment) No. 3 Regulations, 1956. (S.I. 1956 No. 1148.) 5d.
Stopping up of Highways (Berkshire) (No. 1) Order, 1956. (S.I. 1956 No. 1125.) 5d.
Stopping up of Highways (Bradford) (No. 4) Order, 1956. (S.I. 1956 No. 1152.) 5d.
Stopping up of Highways (Durham) (No. 3) Order, 1956. (S.I. 1956 No. 1153.) 5d.
Stopping up of Highways (Kingston upon Hull) (No. 3) Order, 1956. (S.I. 1956 No. 1154.) 5d.
Stopping up of Highways (London) (No. 26) Order, 1956. (S.I. 1956 No. 1155.) 5d.
Stopping up of Highways (London) (No. 30) Order, 1956. (S.I. 1956 No. 1161.) 5d.
Stopping up of Highways (Middlesex) (No. 7) Order, 1956. (S.I. 1956 No. 1126.) 5d.
Stopping up of Highways (Northamptonshire) (No. 7) Order, 1956. (S.I. 1956 No. 1156.) 5d.
Therapeutic Substances Amendment Regulations, 1956. (S.I. 1956 No. 1131.) 5d.
Ulster and Colonial Savings Certificates (Income Tax Exemption) (Amendment) Regulations, 1956. (S.I. 1956 No. 1149.) 5d.
Welfare Foods (Great Britain) Amendment Order, 1956. (S.I. 1956 No. 1130.) 5d.
West Hampshire Water Order, 1956. (S.I. 1956 No. 1139.) 5d.
White Fish Industry (Grants for Fishing Vessels and Engines) (Amendment) Scheme, 1956. (S.I. 1956 No. 1135.) 5d.
White Fish Subsidy (United Kingdom) Scheme, 1956. (S.I. 1956 No. 1134.) 7d.
Wool Textile Industry (Export Promotion Levy) (Amendment No. 3) Order, 1956. (S.I. 1956 No. 1137.) 5d.
Wool Textile Industry (Scientific Research Levy) (Amendment No. 3) Order, 1956. (S.I. 1956 No. 1138.) 5d.
Workmen's Compensation and Benefit (Supplementation) Regulations, 1956. (S.I. 1956 No. 1147.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Recruitment to the Profession

Sir,—I am grateful to Mr. Bowtell for his most helpful observations and feel that his proposals have much to commend them. Equally, I am sorry to see that Mr. Johnson is so wholeheartedly opposed to the cause espoused by Mr. Bowtell and many others.

It would be easy to dismiss Mr. Johnson's views as retrograde, but this would, I feel, be both churlish and unwise. Clearly they are opinions sincerely held and for that reason alone are deserving of consideration. I shall try to show that they are, each and every one of them, so far as they relate to conditions of entry into the profession, fallacious. With the general proposition that every solicitor should have an overall knowledge of the law, no one would quarrel. Certainly I have never suggested the contrary.

So far as a *viva voce* examination is concerned the object would be to assess the worth of persons wishing to be articled, not their theoretical knowledge of law. It is their character which is at issue and thus, to examine finalists, successful or otherwise, would be manifestly unfair. This is a test which, if it is to be of any value at all, must be undergone before time and money is wasted on studies.

As for the examiners, they certainly need to be sound judges of character, but need not necessarily be "solicitors of wide experience." Some, having had experience elsewhere, will already be good judges of character early in their professional lives, whilst others after thirty or more years as solicitors will be quite unfitted to judge anybody. It is very easy for Mr. Johnson to put up his own "Aunt Sally" in order to knock it down, but is there any need to examine all candidates in London, or to limit the number of examiners to three? What of the provincial law societies? Could not they undertake this duty within their own areas?

With the greatest respect it really is nonsense to suggest that a nurse or a physiotherapist or a chiropodist stands in the same relationship to a doctor of medicine as does a managing clerk to a solicitor. The first three named act, in all important matters, under the guidance and/or instruction of a suitably qualified medical man. The managing clerk will, however, perform most, if not all, of the functions of a solicitor, interviewing and advising clients and having the conduct of the business entrusted to his firm. True he will sometimes consult his principals and they will, equally often, consult him, to their mutual advantage. The man who has only a grasp of the practice can never sensibly be termed a managing clerk.

In truth what can he manage, save to perform those functions delegated to him, and that is certainly not what the word "managing," in its present context, implies.

Does Mr. Johnson really feel that a man who qualifies in the manner I have suggested would be less able to adequately advise his clients? I wonder, does he, when occasion to consult counsel arises, discriminate between the barrister (however brilliant) who, shortly after the last war, was called after taking Part II only of the Bar examinations, in favour of the barrister who took both parts but is demonstrably less able? Of course not, and that really disposes of the matter. However, I would wish to allay Mr. Johnson's fears and therefore suggest that a "ten-year man" should, after qualifying, have to spend one year as an assistant before going into partnership or practising on his own account.

If Mr. Johnson can suggest how a managing clerk is to keep himself and his family whilst at law school and in addition how his employer is to make do meanwhile, then he will indeed have earned the gratitude of both parties.

How on earth does Mr. Johnson think managing clerks pass the examinations if not by a thorough knowledge of the subjects involved? Perhaps by cribbing or the exercise of some special foresight that enables them to ascertain the questions in advance of the examination date! Is Mr. Johnson unaware of the excellent correspondence courses available or the tuition provided by colleges and institutes in the evening? Attendance full-time at law school is no safeguard to the profession, but an advantage to students, which, unhappily, all cannot enjoy. To insist upon such attendance is, in reality, to insist upon a "closed shop." To do so would be to lower the standard of a professional body to that of a trade union with no possible advantage; a step which all who have the interests of the profession at heart would rightly deplore.

S. P. BEST.

Rickmansworth, Herts.

NOTES AND NEWS

Miscellaneous

DEVELOPMENT PLANS

County of Northumberland Development Plan

On 1st March, 1956, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the County Hall, Newcastle upon Tyne, 1, and certified copies have also been deposited at the offices of each Municipal Borough and Urban and Rural District Council in the Administrative County. The copies of the plan so deposited will be open for inspection free of charge by all persons interested at the places mentioned above on weekdays between the hours of 10 a.m. and 4 p.m. (between 10 a.m. and 12 noon on Saturdays). The plan became operative as from 19th July, 1956, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 19th July, 1956, make application to the High Court.

County Borough of Bournemouth Development Plan

On 13th July, 1956, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the Town Hall, Bournemouth, and will be open for inspection free of charge by all persons interested between 9.30 a.m. and 12.30 p.m. and between 2.30 p.m. and 4.30 p.m. from Mondays to Fridays and between 9.30 a.m. and 12 noon on Saturdays. The plan became operative as from 31st July, 1956, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any Regulation made thereunder has not been complied with in relation to the approval of the plan, he may within six weeks from 31st July, 1956, make application to the High Court.

Administrative County of London Development Plan

Proposals for alterations or additions to the above development plan were on 19th July, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Metropolitan Borough of Hackney (in the area Homerton High Street—Ponsford Street—Isabella Road). A certified copy of the proposals as submitted has been deposited for public inspection at The County Hall, Westminster Bridge, S.E.1 (Room 311A). A certified copy of the proposals has also been deposited for public inspection at Hackney Town Hall, E.8. The copies of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, at Whitehall, London, S.W.1, before 11th September, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the London County Council (reference LP/O.1) and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

Administrative County of London Development Plan

Proposals for alterations or additions to the above development plan were on 20th July, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Metropolitan Borough of Greenwich (in the area Greenwich High Road—Deptford Bridge—Deptford Creek). A certified copy of the proposals as submitted has been deposited for public inspection at The County Hall, Westminster Bridge, S.E.1 (Room 311A). A certified copy of the proposals has also been deposited for public inspection at Greenwich Town Hall, S.E.18. The copies of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, at Whitehall, London, S.W.1, before 11th September, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the London County Council (reference LP/O.1) and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

CASES REPORTED IN VOL. 100

7th July to 11th August, 1956

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